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GOKUL BHAGAJI PATIL

v

STATE OF MAHARASHTRA AND ANR.

DECEMBER 8, 2006

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[K.G. BALAKRISHNAN AND D.K. JAIN, JJ.]

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Maharashtra Control of Organised Crime Act, 1999—Sections 3(2), 21(4) & 24—Printing of counterfeit stamps and stamp papers by Organised—Crime Syndicate—Raid conducted by Appellant-Police Inspector and his team—Even though the printing press, where stamps were being printed, was identified, Appellant allegedly facilitated continuation of unlawful activities by the Syndicate by deliberately not arresting the prime accused and not sealing the printing press and hence guilty of offences under MCOCA—Charges under s.3(2) & 24—Judicial custody—Entitlement of Appellant to bail—Held, entitled—Purported acts of omission and commission on part of Appellant may not per se bring his case u/s.3(2)—Nevertheless, as a public servant, he failed to take careful measures under MCOCA, attracting s.24—Maximum period of sentence contemplated under s.24 is three years—Appellant deserves bail as he has already been in judicial custody for more than three years.

Appellant was posted as a senior Inspector in a Police Station. Based on certain information received by the Police Station about printing of fake revenue and postal stamps, raids were conducted by Appellant and his team. It is alleged that although the printing press where counterfeit stamps and stamp papers were being printed had been identified but Appellant and his Sub-Inspector neither sealed the said premises nor seized the machines and instead ensured that the prime accused (Telgi) was not arrested and the counterfeit stamps seized were not sent for examination. It is alleged that by helping and facilitating the Organised Crime Syndicate of Telgi in continuing unlawful activities and deliberately abstaining from taking lawful measures under the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) against Telgi and his syndicate, Appellant committed offences punishable under Sections 3(2) and 24 of the MCOCA.

Based on the investigations, a case was registered against the Appellant

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who was arrested and since then he is in judicial custody. Taking into consideration the gravity of charges levelled against the appellant and, *inter alia*, observing that there was no reason to believe that he is not guilty of the offences alleged against him, as contemplated under S.21(4)(b) of MCOCA, the Special Judge dismissed his bail application. That order was affirmed by the High Court.

In appeal to this Court, it is contended that no inference can be drawn from the material on record that the appellant was a party to the conspiracy or had abetted commission or facilitation of the crime with which Telgi or other co-accused were associated and that the circumstances relied upon against the appellant, namely, the alleged failure either to arrest Telgi or to seal the printing press could, at the highest, bring his case within the ambit of Section 24 and not under Section 3(2) of the MCOCA. It is further contended that Appellant having already been in judicial custody for more than three years, the maximum punishment provided under Section 24, he is entitled to be enlarged on bail.

Allowing the appeal, the Court

HELD: 1. Since the provisions of MCOCA have been invoked in the present case, in addition to the basic considerations, namely, the nature and seriousness of the offence; the character of the evidence; reasonable apprehension of witness being tampered with and reasonable possibility of the presence of the accused not being secured at the trial etc; which normally weigh with the courts for granting bail in non-bailable offences, the limitations imposed in sub-section (4) of Section 21 of MCOCA need to be kept in view while deciding whether or not the appellant is entitled to bail. [378-F-G]

Chenna Boyanna Krishna Yadav v. State of Maharashtra & Anr., (Special Leave Petition (Criminal) No. 1358 of 2006), decided by S.C. on 8.12.06, referred to.

2.1. It would not be appropriate at this juncture to go into detailed examination of the alleged crime in order to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or 24 of MCOCA. What is required to be considered is whether in the light of the circumstances (i) there is a reasonable ground to believe that the appellant is not guilty of the two offences he has been charged

A with under MCOCA and (ii) that he is not likely to commit an offence under MCOCA while on bail. [379-H; 380-A]

B 2.2. The purported acts of omission and commission on the part of the appellant may not *per se* bring his case within the ambit of Section 3(2) of MCOCA. Nevertheless, the circumstances of the case do tend to indicate that as a public servant he had failed to take lawful measures under MCOCA, attracting the provisions of Section 24 of MCOCA. Bearing in mind the fact that the appellant has been in judicial custody for over three years, the maximum period of sentence contemplated under Section 24 of MCOCA, the appellant deserves to be released on bail. [380-C-D]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1287 of 2006.

From the final Judgment and Order dated 1-2-2006 of the High Court of Judicature at Bombay in Crl. A. No. 4004 of 2004.

D A.V. Savant, S.V. Deshpande, Pramit Saxena and Anuradha Rustogi for the Appellant.

A. Sharan, A.S.G., Sushil Kumar, Vikas Sharma, Sunita Sharma (for P. Parmeswaran) and V.N. Raghupathy for the Respondents.

E The Judgment of the Court was delivered by

D.K. JAIN, J. Leave granted.

F 2. This appeal by special leave is directed against the Order, dated 1.2.2006, passed by the High Court of Judicature at Bombay, affirming the order passed by Special Judge, Pune, in exercise of powers conferred under the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOCA"), whereby the application filed by the appellant for grant of bail was rejected.

G 3. The appellant, a former Assistant Commissioner of Police, Mumbai was posted as a senior Police Inspector at Mira Road, Police Station, Thane District, during the period from 2.6.1999 to 13.5.2000.

H 4. On or about 15.8.1999, on the basis of some information about printing of fake revenue and postal stamps by a gang, received by Mira Road Police Station, under the charge of the appellant, raids were conducted at certain places. As a result thereof some persons were arrested and case (C.R.

No. 274 of 1999) under Sections 257, 260, 420, 467, 468 read with 34 of Indian Penal Code and under Section 55 of the Indian Postal Act, 1898 was registered against them. A

5. It appears that an inquiry was conducted by the Additional Superintendent of Police, Thane (Rural) in the manner in which investigation in C.R. No. 274 of 1999 was conducted by the appellant and his team, which revealed that although the printing press, situated at Mulund and Bora Bazar, Mumbai, where counterfeit stamps and stamp papers were being printed had been identified but the appellant and his Sub-Inspector Kakade (since dead), incharge of the case, neither sealed the said premises nor seized the machines; they ensured that Abdul Karim Ladsab Telgi (hereinafter referred to as "Telgi"), the Kingpin of the Organised Crime Syndicate and the prime accused was not arrested and remained at large till he was arrested by Karnataka Police and the counterfeit stamps seized in the case were not sent for examination to the Indian Security Press. In nutshell, the allegation against the appellant is that being a public servant he not only rendered help and support in the commission of Organised Crime as defined in clause (e) of Section 2 of MCOCA, he knowingly and intentionally aided and abetted the activities of the Organised Crime Syndicate till 7.6.2002, thereby enabling them to carry on their activities for almost three years. Thus, by helping and facilitating the Organised Crime Syndicate of Telgi in continuing unlawful activities and deliberately abstaining from taking lawful measures under the MCOCA against Telgi and his syndicate, he has committed offences punishable under Sections 3(2) and 24 of the MCOCA. B C D E

6. Based on these investigations a case (C.R.No.135 of 2002) was registered against the appellant and some other persons at Bund Garden Police Station, Pune. The appellant, who by then had been promoted as Assistant Commissioner of Police was arrested on 18.10.2003 by the Special Investigation Team, constituted by the State of Maharashtra. Since then he is in judicial custody. F

7. Taking into consideration the gravity of charges levelled against the appellant and, *inter alia*, observing that there is no reason to believe that the appellant is not guilty of the offences, alleged against him, as contemplated under Section 21(4)(b) of MCOCA, the Special Judge dismissed his bail application. This order having been affirmed by the High Court, the appellant is before us. G

A 8. Mr. A.V. Savant, learned senior counsel appearing for the appellant, has strenuously urged that in the charge-sheet filed against the appellant there are no allegations that he had indulged in "continuing unlawful activities" within the meaning of Section 2(i)(d) of MCOCA and therefore his case does not fall within the ambit of Section 3 of MCOCA. Learned senior counsel
B submits that no inference can be drawn from the material on record that the appellant was a party to the conspiracy or had abetted commission or facilitation of the crime with which Telgi or other co-accused were associated and contends that the circumstances relied upon against the appellant, namely, the alleged failure either to arrest Telgi on 15.9.1999 or to seal the printing press could, at the highest, bring his case within the ambit of Section 24 and
C not under Section 3(2) of the MCOCA. It is, thus, urged that the appellant having already been in judicial custody for more than three years, the maximum punishment provided under Section 24, he is entitled to be enlarged on bail. Learned counsel has also pointed out that some of the co-accused, namely, R.S. Sharma, Mohammad Chand Mulani and Babanrao Tukaram Ranjane, against whom much more evidence is available have already been enlarged on bail by this Court.
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9. *Per contra*, Mr. Sushil Kumar, learned senior counsel appearing for the respondents, while opposing the prayer for bail by the appellant, has submitted that there is sufficient material on record to bring home the charges
E against the appellant of facilitating the continuation of unlawful activities by the Organised Crime Syndicate. Learned counsel, thus, submits that in view of sub-section (4) of Section 21 of MCOCA, the bail has been rightly refused to the appellant.

10. Since the provisions of MCOCA have been invoked in the present
F case, in addition to the basic considerations, namely, the nature and seriousness of the offence; the character of the evidence; reasonable apprehension of witness being tampered with and reasonable possibility of the presence of the accused not being secured at the trial etc; which normally weigh with the courts for granting bail in non-bailable offences, the limitations imposed in sub-section (4) of Section 21 of MCOCA need to be kept in view while
G deciding whether or not the appellant is entitled to bail.

11. The nature and scope of sub-section (4) of Section 21 of MCOCA has been considered and explained by us in *Chenna Boyanna Krishna Yadav v. State of Maharashtra & Anr.*, (Special Leave Petition (Criminal) No. 1358

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of 2006). Interpreting the said provision, we have observed thus:

“It is plain from a bare reading of the *non-obstante* clause that the power to grant bail by the High Court or Court of Sessions is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitations placed by Section 21(4) of MCOCA. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of findings under the said provision is a *sine qua non* for granting bail under MCOCA.”

12. The factors which have weighed with the High Court for rejecting the appellant’s plea of innocence and his bail application are; (i) the printing press and other machinery belonging to Telgi was not sealed; (ii) opinion regarding the counterfeit nature of the seized stamps was not obtained from Indian Security Press, Nashik; (iii) instead of granting permission to the police party which had searched the press to go ahead with further investigations, the police party was recalled without effecting the seizure; (iv) though the police officials, including the appellant, were aware of the serious lapses on their part, yet no attempt was made to correct them, with the result that the prime accused Telgi continued his illegal activities between 29.8.1999 to June, 2002; (v) by not arresting the prime accused Telgi, he allowed the Organised Crime Syndicate to continue its activities and (vi) though he had wide powers to stop the unlawful activities, he did not use them conscientiously and in public interest and allowed the Organised Crime Syndicate to continue their activities unhampered and unobstructed.

13. It would not be appropriate at this juncture to go into detailed examination of the alleged crime in order to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or

A 24 of MCOCA. What is required to be considered is whether in the light of the circumstances, enumerated above; (i) there is a reasonable ground to believe that the appellant is not guilty of the two offences he has been charged with under MCOCA and (ii) that he is not likely to commit an offence under MCOCA while on bail.

B 14. We have considered the matter in the light of the inferences drawn by the High Court from the material on record and the role attributed to the appellant. After hearing learned counsel for the parties, we are of the view that the purported acts of omission and commission on the part of the appellant may not *per se* bring his case within the ambit of Section 3(2) of MCOCA.

C Nevertheless, the aforementioned circumstances do tend to indicate that as a public servant he had failed to take lawful measures under MCOCA, attracting the provisions of Section 24 of MCOCA. Having reached this conclusion and bearing in mind the fact that the appellant has been in judicial custody for over three years, the maximum period of sentence contemplated under Section 24 of MCOCA, we are of the view the appellant deserves to be released on

D bail.

15. Accordingly, the appeal is allowed and the order passed by the High Court is set aside. It is directed that the appellant shall be enlarged on bail on his furnishing a personal bond in the sum of Rs.2 lakhs with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. He shall also remain bound by all the conditions as stipulated in Section 438(2) of the Criminal Procedure Code, 1973. The appellant shall also surrender his passport, if any, before the Special Court, Pune.

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F 16. Any observation touching the merits of the case against the appellant is tentative, only for the purpose of this appeal, and shall not be construed as an expression of final opinion in the matter.

B.B.B.

Appeal allowed.